IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

RCRev..No. 66 of 2007()

RCA.48/2006 of RENT CONTROL APPELLATE AUTHORITY
(ADDL. DISTRICT COURT)THALASSERY
RCP.15/1999 OF PRL.MUNSIFF'S RENT CONTROL COURT,KANNUR
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REVISION PETITIONER/APPELLANT/RESPONDENT:

K.SANTHOSH, PROPRIETOR, ROOPA MEDICALS,
PLAZA JUNCTION, FORT ROAD, KANNUR-1.

BY ADV. SRI.A.K.SRINIVASAN
SRI.N.S.MOHAMMED USMAN
SRI.A.S.BENOY

RESPONDENT: PETITIONER:

SMT.K.SAINABA, D/O.AHAMMED,
KANNUR-1 AMSOM, CAMP BAZAR, CENTRAL WARD,
KANNUR-1.

BY ADV. MILLU DANDAPANI

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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K.BALAKRISHNAN NAIR & K.P.BALACHANDRAN, JJ.

RCR No.66 of 2007-A

Order

Balakrishnan Nair, J.

The tenant is the revision petitioner and the landlady is the respondent. The landlady sought eviction of the tenanted building under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as the Act. The property on the northern, southern and western sides of the petition schedule building is owned by the landlady and her children. They have the necessary sanction and permit to construct a four storeyed building in the said plot of land. The landlady has moved the Government and obtained exemption from the operation of certain rules of the Kerala Building Rules for the construction of the building. Based on the said exemption order, the Municipality granted building permit and the Development Authority granted development permit. But, the Municipality has imposed a condition as Condition No.9 to demolish the petition schedule building. The access to the building proposed to be constructed is through the two sides of the petition schedule building. On the one side, the access is having a width of 4.2 metres

and on the other side, the width is only 2.9 metres. The tenant does not depend on the income from the petition schedule building for his livelihood. There are other buildings in the locality to which, he can shift his business also. Unless the petition schedule building is demolished, the Municipality will not give the occupancy certificate or number the building. Hence the petition for eviction.

2. The tenant resisted the application, contending that the need urged is only a ruse to evict him. If the petition schedule building is demolished, the landlady can collect unconscionable amounts by way of premium from the prospective tenants of the new building. The existing accesses on the two sides of the petition schedule building are sufficient. The Condition No.9, relied on by the landlady has been incorporated by the Municipal Authorities in collusion with the landlady. There is no such condition in the Government order, granting exemption. But, the Government order is relied on by the Municipality to sustain the said condition. So, the tenant prayed for dismissal of the petition.

3. Before the Rent Controller, the landlady was examined as PW1 and the tenant was examined as RW1. Exts.A1 to A16 were marked from the side

of the landlady. After hearing both sides, the Rent Controller allowed the application under Section 11(3) of the Act. The tenant appealed. In appeal, the decision of the Rent Controller was affirmed.

4. The tenant, in this Revision, attacked the order of the Appellate Authority, contending that both the authorities below failed to take into account, relevant documents. The courts below also did not properly appreciate the admissions made by the landlady when she was examined. The learned counsel amplified his submissions by referring to Exts.A3, A4, A5, A6, A7 and A10. Ext.A3 is the order of the Government, granting exemption. The learned counsel for the tenant pointed out that there is no direction in the said Government order, directing demolition of the petition schedule building. Ext.A4 is an order, making a correction to Ext.A3. Exts.A5 and A6 are the building permits. Ext.A7 is the application made by the landlady before the Municipality to grant exemption from Condition No.9 mentioned above in the building permit. Ext.A10 is the affidavit filed by the Power of Attorney Holder of the landlady, undertaking that the tenanted building will be demolished. The said affidavit was to facilitate grant of building permit. Relying on the above documents, the learned counsel Sri.A.K.Sreenivasan reiterated that the

Government order does not stipulate that the tenanted building should be demolished. The Municipality, on their own introduced that condition. That was done in collusion with the landlady. Even before the filing of the RCP, in Ext.A10 affidavit, the Power of Attorney Holder of the landlady had undertaken to demolish the building. All these would show that the condition concerning demolition of the building was unnecessary. In the deposition of the landlady, she has stated that the tenant has no other source of income than the one obtained from the tenanted premises. Certain other admissions in the cross examination would show that she was determined to demolish the building somehow or the other. These facts, being admitted, need not be proved. Without considering the above aspects, the authorities below ordered eviction. Therefore, the learned counsel for the revision petitioner prays for interference by this Court under Section 20 of the Act with the order of eviction.

5. We heard the learned Senior Counsel Smt.Sumathi Dandapani for the respondent landlady also. She submitted that the demolition of the building was necessary for getting the permit as per the Building Rules. The Government only granted exemption in relation to a few Rules. That means, the permit has to be in conformity with the other provisions under the Building

Rules. Therefore, the Municipality imposed the said condition concerning demolition of the building to provide proper access to the building as per the Building Rules, it is submitted. The learned senior Counsel also pointed out that the burden is on the tenant to prove both the limbs of the second proviso to Section 11(3) of the Act.

6. We have gone through the pleadings and the contentions of both sides. The RCP was filed under Section 11(3). That is, for providing access to the newly constructed building, the tenanted building has to be demolished and the said area has to be kept as an open space. Having regard to the two accesses available on both sides of the petition schedule building, we are of the view that the need urged cannot be said to be not bona fide. Even in the absence of any stipulation in the building permit, if the building owner feels that for providing proper and wide access to the new building constructed behind the petition schedule building, she needs the space, she can definitely claim eviction on that ground. In this case, we notice that as per Rule 19(1) of the Kerala Building Rules, 1984, the access should have a minimum width of 5 metres, if the building constructed is a three storeyed building. Rule 19(2) provides that the access shall be maintained free from any obstruction and no

portion of any building of a height less than 2.4 metres from the level of the ground shall be permitted to overhang or to project into such a passage. The said Rule is admittedly not exempted by the Government. Therefore, the Municipality was fully justified in imposing that condition. Once that condition is imposed, the landlady is bound to comply with the same. So the tone and tenure of the landlady in her cross examination concerning the need to get the building is of no consequence. In view of the above mentioned statutory provisions and the liability of the landlady to provide proper access to the newly constructed building, the contention of the learned counsel for the revision petitioner that the need urged is not bona fide, cannot be accepted.

7. Now, the point to be decided is whether the tenant is entitled to get the protection of the second proviso to Section 11(3). He is entitled to get the protection of the first limb, as it is admitted by the landlady that the tenant is depending on the income from the premises for his livelihood. So, he need not prove it. But, regarding the second limb, it has come out in evidence that the landlady has offered two rooms to the tenant. It is also not in dispute that there is a shopping complex nearby on the Court Road. But, the tenant, while in the box, denied the availability of rooms in that building. The mere denial by a self

serving statement is not sufficient to discharge the burden of the tenant under the second limb to the second proviso. The tenant does not have a case that he has approached the landlady for providing accommodation to him. But, on the contrary, the pleadings would show that the landlady offered accommodation, but the tenant declined to accept it. We also notice that the tenant has specifically stated in the counter statement that the landlady had offered alternative accommodation in the form of two rooms in the newly constructed building. In view of the above position, the protection under the second limb of the second proviso to Section 11(3) will not be available to the tenant. He has failed to prove that rooms are not available in the locality for shifting the business as contemplated under the second limb of the second proviso to Section 11(3). In view of the above position, we find nothing illegal with the decision of the authorities below. Even if the documents referred to by the revision petitioner have not been considered by the authorities below, the elaborately we have considered them and we notice that those documents will, in no way, help the revision petitioner or advance his case. In the result, the RCR fails and it is dismissed. No costs.

8. The learned counsel for the revision petitioner prayed for some time to vacate the building. Having regard to the facts of the case, the tenant is granted six months' time to vacate the tenanted premises on condition that he files an unconditional undertaking before the execution court in the form of an affidavit, undertaking to vacate the building within six months from today. The affidavit containing the undertaking shall be filed within three weeks from today before the execution court. The arrears of rent, if any, shall be cleared within one month from today. The rent payable from time to time shall also be paid till the building is vacated.

K.BALAKRISHNAN NAIR,JUDGE

20.11.2007 **K.P.BALACHANDRAN, JUDGE**

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